83-1283

No. ___

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

HARRY TOUSSAINT ALEXANDER, A Member of the Bar of the District of Columbia Court of Appeals,

Petitioner,

v.

BOARD ON PROFESSIONAL RESPONSIBILITY of the District of Columbia Court of Appeals,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTIONS PRESENTED

1. Whether in a quasi-criminal proceeding which results in disciplinary action against a member of the Bar, the Due Process Clause permits a court to suspend an attorney from the practice of law merely on the basis of substantial evidence?

2. Whether, in the instant case the evidentiary basis for ordering Petitioner to be suspended from the practice of law for 90 days was so inadequate that such a suspension would effectively deprive Petitioner of liberty or property without the due process of law mandated by the Fifth Amendment.

PARTIES

The parties to the proceeding in the District of Columbia Court of Appeals -- the court whose judgment is sought to be reviewed -- were:

Harry Toussaint Alexander, a member of the Bar of the District of Columbia Court of Appeals (Petitioner herein)

and

Board on Professional Responsibility of the District of Columbia Court of Appeals (Respondent herein).

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Harry Toussaint Alexander, Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the District of Columbia Court of Appeals, entered in the above entitled

case on September 7, 1983, petition for rehearing en banc denied on December 14, 1983.

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is reported at 466 A.2d 447 (D.C. App., 1983) and is printed in the Appendix hereto at 1a-12a.[1/] The order of the District of Columbia Court of Appeals denying the petition of Respondent below for rehearing en banc is printed in the Appendix hereto at 13a-14a. The Report and Recommendation of the Board on Professional Responsibility of the

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1/ "__a" references are to the pages of the separately bound Appendix which accompanies this Petition.

District of Columbia Court of Appeals is printed in the Appendix hereto at 28a-47a. The Report of Hearing Committee Number Ten of the Board on Professional Responsibility is printed in the Appendix hereto at 15a-27a.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on September 7, 1983. A timely petition for rehearing en banc was denied on December 14, 1983. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

This case involves the Fifth Amendment to the Constitution of the United States; §§ 11-2502 and 11-2503(b) of the D.C. Code (1973), Pub.L. 91-358, 84 Stat 521, § 111, portions of §§ 4, 5 and 7 of Rule XI of the Bar Rules of the District of Columbia Court of Appeals; and portions of Chapters 10 and 12 of the Rules of the Board on Professional Responsibility of the District of Columbia Court of Appeals. All of the relevant provisions are set forth in Section b of the Appendix to this Petition.

STATEMENT OF THE CASE

Section 11-2502 of the District of Columbia Code vests the District of Columbia Court of Appeals with jurisdiction over attorney discipline. To assist it in performing this statutory assignment, the court has established a Board on Professional Responsibility to hear complaints of attorney misconduct, to report its findings and conclusions to the court, and to make appropriate recommendations in connection therewith.[2/] In turn, the Board is authorized to, and does, appoint hearing committees to conduct evidentiary

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2/ Rules Governing the Bar of the District of Columbia, Rule XI, Section 4(l).

hearings. With respect to the matters referred to it, a Hearing Committee will submit a report to the Board setting forth the committee's findings, conclusions, and recommendations.[3/]

Rule 10.4 of the Rules of the Board on Professional Responsibility states, with respect to the conduct of hearings by the Hearing Committee, that "Bar Counsel shall have the burden of proving violations of the disciplinary rules by clear and convincing evidence." Rule 12.6 of the Board's Rules states that "[w]hen reviewing the findings of a Hearing Committee, the Board shall

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3/ Rules Governing the Bar of the District of Columbia, Rule XI, Section 4(3)(c).

employ a 'substantial evidence on the record as a whole' test." So also, as the Court of Appeals stated in its opinion in this case, under its own rules it is "required to 'accept the findings of fact made by the Board unless they are unsupported by substantial evidence of record, ...' and must 'adopt the recommended disposition of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or otherwise would be unwarranted.' D.C. App. R. XI, Sec. 7(3); In re Smith, 403 A.2d 296, 302-03 (D.C. 1979)." (2a).

In its decision issued on September 7, 1983, a three-judge panel of the Court of Appeals for the District of

Columbia concluded that Petitioner herein, Harry T. Alexander, had "twice neglected a legal matter entrusted to him in violation of DR 6-101(A)(3), and once engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5)."[4/] (1a-2a). The court ordered that Mr. Alexander "be suspended from the practice of law for a period of three months...." (12a). The Court's decision and order were consistent with the conclusions and recommendation of the Board on Professional

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4/ DR 6-101(A)(3) provides that: "A lawyer shall not ... [n]eglect a legal matter entrusted to him."

DR 1-102(A)(5) provides that: "A lawyer shall not ... [e]ngage in conduct that is prejudicial to the administration of justice."

Responsibility, which, in turn, had agreed with the report of its Hearing Committee. (2a, 30a-31a).

The disciplinary suspension imposed on Mr. Alexander is based on two discrete, relatively brief events. With regard to the first, a trial date had been set for November 6, 1980 in Superior Court before Judge Tim Murphy for a client of Mr. Alexander's who was charged with "driving under the influence" and reckless driving. Although Mr. Alexander did not appear at the prescribed time, the Board accepted Mr. Alexander's explanation that his failure to do so was inadvertent, not willful. Nevertheless, it found his conduct to be prejudicial to the

administration of justice and to constitute neglect of a legal matter entrusted to him, apparently because of what in its view were additional aggravating factors (2a-3a, 7a).

The first of these involved a chance encounter around 3:00 o'clock in the afternoon of November 6th between Mr. Alexander and Judge Murphy's courtroom clerk. The two men passed each other on escalators going in opposite directions as the clerk was hurrying back to the courtroom and Mr. Alexander was hurrying to a court appearance. In the few seconds available for conversation, the clerk advised Mr. Alexander about his failure to appear, indicated that the case would be continued on a

day-to-day basis until the matter was settled, and suggested that Mr. Alexander check with the court. The clerk did not identify the case to Mr. Alexander because he could not recall its name. (60a-67a). Mr. Alexander did appear in Judge Murphy's court on the very next day, November 7, and sought to proffer an explanation for his absence. But by then, the case had been called again and further continued, and Judge Murphy refused to hear the explanation, deciding instead to refer the incident to the Office of Bar Counsel. (7a, 32a-34a).[5/]

5/ Mr. Alexander's written response to the Bar Counsel's complaint stated that, when he and the court clerk met, "I was apparently on my way to another court ..., and at that time it was not convenient to make a

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The second supposedly aggravating factor relied on by the Board was Mr. Alexander's failure to avail himself of the "locator" procedure established for the Superior Court (7a-8a, 32a). That procedure was designed to alleviate situations in which attorneys are aware in advance of a potential scheduling conflict, not for attorneys to check in generally when they are in the courthouse.[6/] Neither the Board nor the

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note, and not having been provided with the name of the case, the incident slipped my mind." (92a). Neither the Board nor the court referred to this explanation, but simply seemed to assume that Mr. Alexander acted in "cavalier" fashion in not contacting Judge Murphy forthwith. (7a, 33a, 35a).

6/ As Judge Murphy explained in his testimony before the Hearing

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Court stated why, if the scheduled appearance in Judge Murphy's court was not noted (albeit inadvertently) on

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Committee, "there was concern caused by actions of mine in disciplining lawyers for failing to appear in court and the lawyers being concerned that they were obligated to be in more courts than one at the same time and it was a Catch 22 situation...." (53a-54a). The court in this case described the "locator" procedure:

> The "locator" procedure permits attorneys to telephone the Chief Judge's Chambers before 8:45 a.m. and give the clerk a list of the attorney's other court appearances scheduled for that day. This list then is distributed to all trial judges in order to facilitate locating an attorney when needed. (7a-8a).

Mr. Alexander's calendar, he should nonetheless have somehow anticipated a scheduling conflict for which he should have used the "locator."[7/]

The other event which resulted in a separate and second finding that Petitioner neglected a legal matter entrusted to him is based on a complaint

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7/ There was no allegation nor any evidence that the interest of Mr. Alexander's client was harmed by Mr. Alexander's failure to appear on November 6. Mr. Alexander had anticipated the case would be disposed of through a negotiated plea, and had previously started negotiations with the prosecutor towards that end. That was indeed the way in which the case ultimately was concluded, to the complete satisfaction of the client (who, notwithstanding Judge Murphy's urging him to file a complaint with Bar Counsel, declined to do so). (56a-59a).

filed by a Larry Fisher and concerns a Superior Court hearing on August 25, 1980 before Judge Fred McIntyre to revoke Mr. Fisher's probation. Mr. Alexander was unable to appear at the August 25 revocation hearing and sent an associate, Patrick Patrissi, instead. (4a, 37a). Mr. Patrissi was a member in good standing of the District of Columbia Bar.

The gist of the Board's finding with regard to the Fisher complaint is that Mr. Patrissi's representation "was completely ineffective", for which Petitioner is responsible; that, as a result, Judge McIntyre made a mistake in sending Mr. Fisher back to jail; and that Petitioner did nothing to correct

the alleged mistake and obtain Mr. Fisher's release. (4a, 9a-10a, 37a-39a, 43a-44a). The record shows without dispute that Mr. Fisher had previously had two preliminary hearings on an unrelated charge for which Mr. Alexander had been retained and at which Mr. Patrissi was present, once as Mr. Fisher's sole counsel to seek a continuance and once accompanying Mr. Alexander (85a-86a). Immediately prior to Mr. Fisher's August 25 revocation hearing, Mr. Patrissi talked briefly with the Assistant U.S. Attorney handling the case and with Mr. Fisher himself (38a).

The transcript of the revocation hearing establishes that the Government

asserted that Mr. Fisher "... never brought proof of employment, ... has not enrolled in a drug treatment program as ordered by this Court ... [a]nd, recently he failed to report on August the 20th and also failed to show for a show cause hearing." (98a). Mr. Patrissi responded in detail to these allegations, explaining that Mr. Fisher did report on one occasion and why he did not report on another occasion. Mr. Patrissi also produced a medical certificate indicating that Mr. Fisher could not be in a drug program because he was hospitalized during the relevant period. In addition, Mr. Patrissi stated that Mr. Fisher was gainfully employed, gave the name of the employer, and offered to bring proof of

Mr. Fisher's employment when challenged by the Government. When the Government then urged that Mr. Fisher "had been arrested several times since he has been placed on probation," Mr. Patrissi twice argued that his probation be continued pending disposition of those cases, pointing out that "[h]e's only been arrested in three, not convicted of any of the three." (100a-103a, 107a-109a).[8/]

8/ Both the Board and the Court fault Mr. Patrissi for not specifically directing Judge McIntyre's attention to Rule 32, Superior Court Rules of Criminal Procedure, which deals with the use of unadjudicated criminal charges in a probation revocation hearing. (4a, 37a-38a). However, neither the Board nor the court mentions that, even if he did not refer to the applicable rule by number, he did assert the basic principle underlying the rule -- not once, but twice.

Notwithstanding Mr. Patrissi's efforts, Judge McIntyre decided to take Mr. Fisher off probation, not permanently, but only until the pending charges on which he had been arrested were "disposed of" (111a-112a). Although Judge McIntyre adverted to the arrests, he expressly stated that he did not feel Mr. Fisher had "been working out on ... [his] probation at all" and emphasized that Mr. Fisher neither "seem[ed] to have any type of employment" nor had presented any evidence of employment to his probation officer (111a).

Mr. Fisher was later released from his incarceration, but not because of any judicial determination that Judge McIntyre had erred. Rather, the record

is unequivocal that the "main basis for release was his [Mr. Fisher's] commitment to cooperate with the government" in then on-going narcotics investigations (77a-78a, 82a, 84a). The attorney for the Public Defender Service who took over Mr. Fisher's representation testified that the situation with respect to the revocation hearing "was very confusing" and that she "was not completely sure that it was proper and within the guidelines." (78a, 79a-80a).[9/]

9/ The Public Defender attorney testified that she "initially... thought that he [Mr. Fisher] was being held pending final revocation, as would be the usual practice of a pending case... that he was probably being held pursuant to... a preliminary determination awaiting the final revocation, which usually would happen after the disposition of the pending case." (73a-74a). The transcript of the August 25 hearing

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The record is also unequivocally clear that Mr. Fisher met with Mr. Alexander about a week after the August 25 revocation hearing. Thus, the transcript of proceedings before Superior Court Judge George H. Revercomb on September 3, 1980 establishes that Mr. Fisher appeared before Judge Revercomb on that date for arraignment on the unrelated charge as to which he had retained Mr. Alexander to represent him, that Mr. Alexander was then present as Mr. Fisher's counsel, that he did

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(111a-112a), referred to above, indicates this is precisely what happened. What seems to have confused the Public Defender was an improper entry, probably due to a clerical error, in Mr. Fisher's jacket.

represent him, and that at the conclusion of the hearing he specifically asked for and was granted permission to confer with Mr. Fisher "in the corner" to discuss "some very important information" (26a-27a, 114a-121a).10/

As to both the complaint by Judge Murphy and the complaint by Mr. Fisher, the Court of Appeals stated with respect to the Board's findings against

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10/ Mr. Fisher untruthfully testified that Mr. Alexander did not appear at his arraignment and he never heard from him after the August 25 revocation hearing. (68a-69a, 70a). Mr. Fisher also untruthfully testified "that Patrissi had not opened his mouth" before Judge McIntyre in the probation revocation hearing. (38a). Mr. Fisher further insisted that he paid Mr. Alexander his full $2000 fee, yet could produce receipts for payments of only $1500 (37a).

Mr. Alexander that "we cannot say that these findings are unsupported by substantial evidence" (10a). At all stages of the proceedings below, Petitioner herein challenged the evidentiary basis for these findings. (e.g. 6a, 48a, 50a-52a). Moreover, Petitioner specifically contended in his brief to the Court of Appeals that the findings of the Board are not supported by clear and convincing evidence. (48a).

REASONS FOR GRANTING THE WRIT

A. Due Process Requires That Disciplinary Orders Against Attorneys Must Be Based On A Higher Standard of Proof Than Substantial Evidence

In In re Ruffalo, 390 U.S. 544, 551 (1968), this Court held that disciplinary proceedings against attorneys "are adversary proceedings of a quasi--criminal nature ..." Because such proceedings may result in "a punishment or penalty imposed on the lawyer... [h]e is accordingly entitled to procedural due process..." Ruffalo, supra, 390 U.S. at 550. Thus, the privilege of practicing law is not "a matter of grace and favor", but rather a right that cannot lightly or capriciously be taken from an attorney; the power to withdraw that

right "ought always to be exercised with great caution". Charlton v. F.T.C., 543 F.2d 903, 906 (D.C. Cir. 1976), citing Wilner v. Committee on Character and Fitness, 373 U.S. 96, 102 (1963); Ex Parte Wall, 107 U.S. 265, 288 (1883); and Ex Parte Garland, 72 U.S. (4 Wall) 333, 379 (1867).

In Addington v. Texas, 441 U.S. 418, 423 (1979), this Court, citing its earlier decision in In re Winship, 397 U.S. 358 (1970), reiterated that "a standard of proof... is embodied in the Due Process Clause", and that the function of such a standard is to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual

conclusions for a particular type of adjudication." Specifically, "[t]he standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision." Ibid.

The Court in Addington described "three standards or levels of proof for different types of cases." Ibid. Thus:

(1) "At one end of the spectrum is the typical civil case involving a monetary dispute between private parties. Since society has a minimal concern with the outcome of such private suits, plaintiff's burden of proof is a mere preponderance of the evidence. The litigants thus share the risk of error in roughly equal fashion." 393 U.S. at 423.

(2) "In a criminal case, on the other hand, the

interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment... This is accomplished by requiring under the Due Process Clause that the state prove the guilt of an accused beyond a reasonable doubt...." 393 U.S. at 393-394.

(3) "The intermediate standard... usually employs some combination of the words 'clear,' 'cogent,' 'unequivocal,' and 'convincing,'.... One typical use of the standard is in civil cases involving allegations of fraud or some other quasi--criminal wrongdoing by the defendant. The interests at stake in those cases are deemed to be more substantial than mere loss of money and some jurisdictions accordingly reduce the risk

> to the defendant of having his reputation tarnished erroneously by increasing the plaintiff's burden of proof. Similarly, this Court has used the 'clear, unequivocal and convincing' standard of proof to protect particularly important individual interests in civil cases... (deportation)... (denaturalizaton)..." 441 U.S. at 424-425.

In Santosky v. Kramer, 455 U.S. 745, 754-757 (1982), the Court quoted extensively and with approval from Addington, pointing out that the analysis in Addington flowed from a "straightforward consideration" of three distinct factors specified in Mathews v. Eldridge, 424 U.S. 319, 335 (1976): "the private interests affected by the proceeding; the risk of error created by

the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure."

Applying this Court's decisions in Ruffalo, Eldridge, Addington and Santosky to attorney discipline proceedings, we submit that a substantial evidence standard does not pass Constitutional muster. That standard, as this Court has defined it, requires only "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consolo v. Federal Maritime Commission, 383 U.S. 607, 619-620 (1966); Consolidated Edison Co. v. Labor Board, 305 U.S. 197, 229 (1938). "This is something less than

the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Consolo v. F.M.C., supra. As the United States Court of Appeals for the District of Columbia Circuit stated in Charlton v. F.T.C., supra, in refusing to permit the Federal Trade Commission to suspend an attorney from practicing before it based only on substantial evidence of wrongdoing: "Nowhere in our jurisprudence have we discerned acceptance of a standard of proof tolerating 'something less than the weight of the evidence.'" (543 F.2d at 907).

Indeed, even a preponderance of the evidence standard is Constitutionally questionable in attorney discipline cases. Given that such discipline imposes a punishment or penalty on the lawyer (Ruffalo, supra), and given also that withdrawal of the right to practice law ought always to be exercised with great caution (Ex Parte Wall, supra), surely society has more than a "minimal concern" with the outcome of such proceedings, and surely a "roughly equal" sharing of the risk of error is grossly inequitable. (Addington, supra). Accordingly, nothing less than the "clear, unequivocal and convincing" standard can fairly be said to provide due process. As Addington states, that is the appropriate standard where, as

here, the proceedings are quasi-criminal in nature, and a particularly important individual interest is at stake which is far more substantial than mere loss of money. Both the Appellate Judges Conference and the American Bar Association have recognized this by adopting a "clear and convincing" standard of proof in attorney discipline proceedings.11/

In the instant case, the District of Columbia Court of Appeals did not use a "clear and convincing" standard nor

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11/ Standard 8.40, Joint Committee of Professional Discipline of the Appellate Judges Conference and the Standing Committee on Professional Discipline of the American Bar Association, Standards for Lawyer Disciplinary and Disability Procedures (February, 1979).

even a preponderance of the evidence test in ordering Petitioner's suspension from the practice of law. It was satisfied to take the action it did against Petitioner based only on substantial evidence.

It is no answer to the Constitutional objection that the Board on Professional Responsibility concluded that the Hearing Committee's "findings of fact were supported by clear and convincing evidence." (30a). Matters of attorney discipline are the ultimate responsibility of the District of Columbia Court of Appeals, not the Board. In re Dwyer, 399 A.2d 1, 11-12, (D.C. App., 1979), citing §§ 11-2502 and 11-2503(b), D.C. Code, 1973; cf. Powell

v. Nigro, 543 F.Supp. 1044, 1046 (D.C. 1982). That responsibility cannot be abrogated by the court by delegating it to a non-judicial board, and then treating that board's decisions as those of an independent administrative agency. See Standard 8.49, Joint Committee of Appellate Judge and ABA, supra, n. 11. (The report of a disciplinary committee is advisory only.) The inescapable fact is that, whatever standard of proof the Board used, the statutory decision--maker -- the Court of Appeals -- had only to be persuaded by substantial evidence that discipline was warranted to impose such discipline upon Petitioner. In short, for all that appears in its opinion, the court to whom the statute entrusted the authority to discipline

attorneys could have based its action against the Petitioner on "something less than the weight of the evidence" or on the bare possibility that the inference of Petitioner's wrongdoing was co-existent with a contrary inference. We submit that this is Constitutionally impermissible.[12/]

12/ The District of Columbia Court of Appeals has not been unanimous in delegating its authority to the Board and merely exercising a reviewing function. A strong dissent was filed in In re Colson, 412 A.2d 1160, 1175 (D.C. App., 1979) asserting that "the basic decisional responsibility for the sanction to be imposed in a disciplinary proceeding should rest upon the judges of a jurisdicton's highest court, rather than upon the members of a court-created disciplinary body. After all, our Board on Professional Responsibility is not akin to an administrative agency...."

We further submit that the issue of what standard of proof in attorney discipline proceedings complies with Constitutional due process is an important one meriting this Court's attention. Indeed, the issue goes beyond attorneys, and affects all whose profession or other occupation depends on a license by the government.

B. The Evidentiary Basis For Petitioner's Suspension Is So Inadequate That the Suspension Violates Due Process

Government action adverse to an individual as a result of a criminal or quasi-criminal proceeding violates due process if it is not based on adequate proof. For example, in Thompson v. City of Louisville, 362 U.S. 199 (1960), the

petitioner had been convicted in police court of disorderly conduct and loitering, and this court reviewed "[t]he ultimate question presented to us... whether the charges against petitioner were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment" (362 U.S. at 199). The Court set aside the convictions, holding that the record was devoid of supporting evidence. In Schware v. Board of Bar Examiners, 353 U.S. 232 (1957), the question presented was "whether petitioner, Rudolph Schware, has been denied a license to practice law in New Mexico in violation of the Due Process Clause of the Fourteenth Amendment to the United

States Constitution" (353 U.S. at 233). The Court held that Schware was deprived of due process. In reaching this result, the Court considered in some detail not only the evidence showing Schware was of good moral character, but also the "facts in the record which raised substantial doubts about his moral fitness to practice law" (353 U.S. at 240). The Court concluded that "[i]n the light of petitioner's forceful showing of good moral character, the evidence upon which the State relies... cannot be said to raise substantial doubts about his present good moral character" (353 U.S. at 247).

This is not to say, of course, that the Thompson and Schware cases are

factually analogous to the instant case; obviously, they are not. The point is, though, that this Court has interceded in the past on due process grounds where the evidence is woefully lacking to sustain the result reached by lower courts. We submit we have such a situation in the instant case.

Thus, with respect to Mr. Alexander's inadvertent failure to appear at a hearing in Superior Court before Judge Murphy, the supposed "aggravating" factors relied on by the court below turn out to be no more than "makeweights". The circumstances of Mr. Alexander's disjointed and fragmentary conversation with a court clerk cannot justify characterizing Mr. Alexander as "cavalier"

in his disregard for the court, as if a chance encounter on an escalator were somehow to be equated to formal notification and a command to appear. Moreover, there is no logic whatever to faulting Mr. Alexander for not using the "locator" procedure, which is designed to resolve problems resulting from conflicting scheduling of court dates, when Mr. Alexander did not realize he had a conflict in the first place.

With respect to Mr. Patrissi's supposedly inadequate representation of Mr. Fisher at the latter's revocation of probation hearing (for which Mr. Alexander was deemed responsible), plainly the court's perception of the matter was that Mr. Fisher was deprived of his

liberty for some months because of a mistake by his counsel, who then had no further contact with him. As we have shown (supra, pp. 15-22), the record is clear that the facts are otherwise: no mistake was proven, and there was no abandonment because Mr. Alexander and Mr. Fisher conferred together several days after the hearing. Moreover, it has not been suggested that there was any additional evidence that Mr. Patrissi should have brought to the court's attention at the probation hearing. And, having specifically argued to the court that Mr. Fisher had only been arrested but not convicted on new charges, surely Mr. Patrissi was entitled to assume that an experienced judge would be aware of what limitations the

rules placed on the use of such arrests in making the court's determination of whether to return Mr. Fisher to jail. Indeed, to blame Mr. Patrissi for ignorance of the rules is to implausibly blame both the judge and the Assistant U.S. Attorney handling the case as well for similar lack of knowledge.

The subject of the disciplinary action in this case is a well-known and respected member of the Bar of the District of Columbia as well as of the community in general, having sat as an Associate Judge on the Superior Court of the District of Columbia from 1966 to 1976.[13/] Just as the Schware Court

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13/ Mr. Alexander, who is black, was born in 1924 in New Orleans, Louisiana in other than wealthy

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found inadequate evidence to support the findings below, Petitioner asks this Court to recognize the same type of due process defect here.

CONCLUSION

For all of the reasons set forth

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circumstances. He served in the Navy in World War II, graduated from Xavier University of New Orleans in 1949, and received his J.D. in 1952 from Georgetown University Law School, where he was a member of the Georgetown Law Journal. Prior to his judicial service, Mr. Alexander held various positions in the Department of Justice and also served as an Assistant United States Attorney in Washington, D.C. From 1965 to 1966, he was the principal assistant in that office, second only to the United States Attorney. Since retiring from the bench in 1976, Mr. Alexander has been engaged in a general private practice.

herein, Petitioner asks that this Court grant this Petition and issue a Writ of Certiorari to the District of Columbia Court of Appeals.

Respectfully submitted,

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Dated: February 4, 1984

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